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ATTORNEYS FOR DEBTOR

5
6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:
9 NUTRACEA, a California corporation,
10 Debtor.

Chapter 11

Case No. 2-09-bk-28817-CGC

11 **APPLICATION OF DEBTOR FOR**
12 **APPROVAL OF EMPLOYMENT**
13 **OF ERNST & YOUNG, LLP AS**
14 **TAX ADVISOR *NUNC PRO TUNC***
15 **TO JANUARY 22, 2010**

16 Pursuant to 11 U.S.C. § 327(a) and 328(a), Bankruptcy Rule 2014, and Local
17 Bankruptcy Rule 2014-1 debtor NutraCea, a California corporation (“**Debtor**”), hereby
18 applies to employ Ernst & Young LLP (“**E&Y LLP**”), as its tax advisor, *nunc pro tunc* to
January 22, 2010. In support of this application, Debtor states as follows:

19 1. Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code
20 on November 10, 2009 (the “**Petition Date**”).

21 2. Debtor is a publicly traded health-science company that develops and
22 distributes stabilized rice bran and proprietary rice bran formulations.

23 3. Debtor requires the services of a tax advisor to prepare its federal, state and
24 local income and franchise tax returns and related work papers for fiscal years 2008 and
25 2009, and to provide general tax advice.

1 4. Debtor desires to employ E&Y LLP as its tax advisor, effective as of January
2 22, 2010 pursuant to the terms and conditions set forth in the agreements between the
3 Debtor and E&Y LLP (the "Engagement Letters"). The Engagement Letters consist of the
4 Master Tax Services Agreement, dated January 22, 2010, and the Tax Advisory and Tax
5 Compliance Statement of Work, dated January 22, 2010, copies of which are attached to
6 the attached Affidavit of John M. Taylor as Schedules A-1 and A-2.
7

8 5. E&Y LLP is a duly licensed certified public accounting firm in the State of
9 Arizona and has considerable experience in the preparation of state, local and federal tax
10 returns.
11

12 6. Debtor selected E&Y LLP because of its considerable experience in the
13 preparation of state, local and federal tax returns and related work papers and its overall
14 expertise in tax matters.
15

16 7. As is set forth in the attached Affidavit of John M. Taylor, prior to the
17 Petition Date, Debtor employed E&Y LLP as its tax advisor. During the ninety days
18 immediately preceding the bankruptcy filing, Debtor paid to E&Y LLP a total of \$48,000. As
19 of the date hereof, E&Y LLP is owed approximately \$18,748 by Debtor for services provided
20 by E&Y LLP prior to the bankruptcy filing. Upon approval of this Application, E&Y LLP
21 has agreed to waive any claim for amounts owing for pre-petition services.
22

23 8. As is set forth in the attached Affidavit of John M. Taylor, E&Y LLP has
24 extensive experience in tax-related accounting matters.
25

 9. To the best of Debtor's knowledge, and except as otherwise set forth in the
attached Affidavit of John M. Taylor: (a) E&Y LLP has no connection with Debtor, any
creditor, any party in interest, their respective attorneys and accountants, the United States

1 Trustee, or any person employed in the office of the United States Trustee; (b) holds no
2 claim against Debtor or the estate; and (c) represents no interest adverse to Debtor or the
3 estate.
4

5 10. E&Y LLP may be employed, or have been employed, as tax advisor for one
6 or more creditors, professionals or equity security holders of Debtor, but such employment
7 is not adverse to the Debtor and no confidential information has been or will be shared.

8 11. The following professionals whom E&Y LLP believes to be closely
9 associated with Debtor's chapter 11 case have provided in the past and/or are currently
10 providing services to E&Y LLP: Sidley Austin LLP; Paychex, Inc.; Iron Mountain;
11 Stratify; Navigant Consulting; and Jennings, Strouss & Salmon PLC. In addition, Wells
12 Fargo Bank is a lender that participates in E&Y LLP's Revolving Credit Program.

13 12. E&Y LLP is currently a party or participant in certain litigation matters
14 involving parties-in-interest in this case, as follows:
15

16 A. Aetna Life Insurance Company is a co-defendant with E&Y LLP in an action
17 pending in the United States District Court for the Northern District of Georgia (Civil
Action No: 1-09-cv-2635).

18 B. Sidley Austin LLP is (i) a co-defendant with, among others, E&Y LLP in an
19 arbitration matter before the American Arbitration Association: and (ii) is a co-defendant in
20 an action pending in the District Court of Harris County, Texas 113th Judicial District (No:
2004-14400).

21 C. Wells Fargo Securities LLC is a co-defendant with, among others, E&Y LLP) in
22 litigations pending in the United States District Court for the Southern District of New
23 York with the following case numbers: (1:09-cv-2363); (1:09-cv-1946); (1:09-cv-6041);
(Civ. No: 1:08cv9793) and (Civ. No: 09-07878).

24 13. The hourly rates charged by E&Y LLP range from \$679.00 for partners to
25 \$221.00 for staff. The rates are subject to periodic review and adjustment.

14. The following chart shows the 2010 billing rates for the professionals who may provide services to the Debtor:

PROFESSIONAL	STANDARD RATE	DISCOUNTED RATE	DISCOUNTED RATE
Principals / Partner	\$970	70%	\$679
Executive Directors	\$825	70%	\$578
Senior Manager	\$810	70%	\$567
Manager	\$660	70%	\$462
Senior	\$610	70%	\$427
Staff	\$315	70%	\$221

15. Included among the terms and conditions set forth in the Engagement Letters is language substantially similar to the following:

Any controversy or claim with respect to, in connection with, arising out of, or in any way related to this Agreement or the services provided hereunder (including any such matter involving any parent, subsidiary, affiliate, successor in interest or agent of the Client or its subsidiaries or of E&Y LLP shall be brought in the Bankruptcy Court or the applicable district court (if such district court withdraws the reference) and the parties to this Agreement, and any and all successors and assigns thereof, consent to the jurisdiction and venue of such court as the sole and exclusive forum (unless such court does not have jurisdiction and venue of such claims or controversies) for the resolution of such claims, causes of action or lawsuits. The parties to this Agreement, and any and all successors and assigns thereof, hereby waive trial by jury, such waiver being informed and freely made. If the Bankruptcy Court, or the district court upon withdrawal of the reference, does not have or retain jurisdiction over the foregoing claims or controversies, the parties to this Agreement and any and all successors and assigns thereof, agree to submit first to nonbinding mediation; and, if mediation is not successful, then to binding arbitration, in accordance with the dispute resolution procedures set forth in Exhibit B to this Agreement. Judgment on any arbitration award may be entered in any court having proper jurisdiction. The foregoing is binding upon the Client, E&Y LLP and any all successors and assigns thereof.

1 16. In addition, included among the terms and conditions set forth in the
2 Engagement Letters is language substantially similar to the following:

3
4 E&Y LLP shall be solely responsible for the performance of the Services and all of the
5 other liabilities and obligations of E&Y LLP under this Agreement, including any
6 Statement of Work. Client and its affiliates or other persons or entities for or in respect of
7 which any of the Services are provided shall have no recourse, and shall bring no claim,
8 against any E&Y Entity other than E&Y LLP, or against any subcontractors, members,
shareholders, directors, officers, managers, partners or employees of E&Y LLP or any
other E&Y Entity, or any of the assets of any thereof, in connection with the performance
of the Services or otherwise under the Agreement or any Statement Of Work.

9 Neither party will be liable to the other (or to any affiliate thereof or any other person or
10 entity for or in respect of which any of the Services are provided), for any consequential,
11 incidental, indirect, punitive or special damages (including loss of profits, data, business or
12 goodwill) in connection with the performance of the Services or otherwise under this
13 Agreement, regardless of whether such liability is based on breach of contract, tort, strict
liability, breach of warranty, failure of essential purpose or otherwise, and even if the first
party is advised of the likelihood of such damages.

14 To the fullest extent permitted by applicable law (including, without limitation, for these
15 purposes, the rules and interpretations of the AICPA and the U.S. Securities and Exchange
16 Commission), and except in the case of E&Y LLP's willful misconduct, the total aggregate
17 liability of E&Y LLP to Client (and to any affiliate thereof or any other person or entity for
18 or in respect of which any of the Services are provided) in connection with the
19 performance of the Services shall be limited to the fees actually paid to E&Y LLP in
respect of the Services directly relating to and forming the basis of Client's claim,
regardless of whether liability is based on breach of contract, tort, strict liability, breach of
warranty, failure of essential purpose or otherwise.

20 17. Debtor seeks approval of the employment of E&Y LLP *nunc pro tunc* as of
21 January 22, 2010. E&Y LLP began rendering services on a limited basis on that date in
22 order to assist the Debtor with pressing tax planning matters. The services provided were
23 limited to the matters that could not be delayed. Accordingly, Debtor submits that *nunc*
24 *pro tunc* approval of E&Y LLP's employment as of January 22, 2010 is appropriate. *See*
25

1 *In re Atkins*, 69 F.3d 970 (9th Cir. 1995) (*nunc pro tunc* approval appropriate where delay
2 in obtaining court approval is satisfactorily explained and services benefitted the estate);
3 *Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.)*, 837 F.2d 389 (9th Cir.1988)(same).
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5 18. The Affidavit of John M. Taylor pursuant to 11 U.S.C. §§ 327(a) and
6 Bankruptcy Rule 2014(a) is attached hereto as Exhibit “A” and incorporated herein.

7 WHEREFORE, the Debtor requests that it be authorized to employ E&Y LLP as its
8 tax advisor, on the terms set forth in the Engagement Letters attached to the Declaration of
9 John M. Taylor, effective as of January 22, 2010, and that it have such other and further
10 relief as may be proper under the circumstances.

11 Dated this 12th day of March, 2010.

12 FORRESTER & WORTH, PLLC

13 /s/ SCF (006342)

14 S. Cary Forrester

15 Attorneys for Debtor

16 Copy emailed and/or mailed on this 12th day
17 of March, 2010 to all those on the Official
18 Notice Service List.

19 /s/ Carrie A. Lawrence

20 Carrie A. Lawrence
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